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AM Retail Group, Inc. d/b/a DKNY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NANDALYN REYES, an Individual,

Plaintiff,

vs.

AM RETAIL GROUP, INC., dba DKNY; a
Foreign Corporation; DOES 1 Through 25,
inclusive; and ROE CORPORATIONS 1
Through 25, inclusive,

Defendants.

Case No. 2:21-cv-02110-JAD-BNW

**DEFENDANTS' REQUEST TO
EXTEND THE EXPERT REBUTTAL
DEADLINE**

(THIRD REQUEST)

Defendant AM Retail Group, Inc. dba DKNY ("Defendant"), through its counsel Jackson Lewis P.C., request this Court extend the expert rebuttal deadline from October 15, 2022, to October 25, 2022.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

This is an employment case in which Plaintiff alleges harassment, discrimination, retaliation, tortious constructive discharge, intentional infliction of emotional distress, and negligent hiring, training, and supervision. Plaintiff generally alleges she was subjected to sexually harassing statements and that Defendant failed to take appropriate action after Plaintiff reported the alleged harassment.

On January 1, 2022, the Court adopted the parties' stipulated discovery plan. ECF No. 18. The parties then exchanged initial disclosures and both parties propounded written discovery

1 requests. On June 17, 2022, Plaintiff served a Designation of Expert Witness. Plaintiff identified
2 her treating physician, Dr. Michael Elliot, as a non-retained treating physician and indicated Dr.
3 Elliot may provide expert opinions “regarding information learned during his treatment of
4 Plaintiff[.]”

5 On July 18, 2022, this Court granted the parties’ first request to extend the discovery
6 deadlines. ECF No. 25. Following the stipulation, Plaintiff provided her responses to Defendant’s
7 written discovery requests. In addition, defense counsel continued the process of retaining an expert
8 witness to ensure the rebuttal report was completed by September 15, 2022.

9 On August 29, 2022, this Court extended the deadline to file an expert rebuttal report to
10 October 15, 2022. ECF No. 27. Defendant noted that undersigned counsel had recently been
11 involved in a motor vehicle accident, which interrupted finalizing the selection of the rebuttal
12 expert. Following the stipulation, undersigned counsel selected a rebuttal expert, provided
13 necessary documentation, and had several discussions with the expert. The expert began working
14 on the rebuttal report.

15 To accommodate Plaintiff and Plaintiff’s Counsel’s schedule, Defendant took the deposition
16 of Plaintiff on October 4, 2022. On October 10, 2022, undersigned counsel was unexpectedly out
17 of the office as undersigned counsel was seeking treatment at an urgent care. Defendant received
18 an expedited transcript of Plaintiff’s deposition on October 12, 2022. Undersigned counsel then had
19 a follow-up medical appointment that same day and then underwent necessary bloodwork on
20 October 15, 2022. As a result, undersigned counsel was unable to communicate with the rebuttal
21 expert regarding the report until October 13, 2022.

22 Additionally, Defendant’s rebuttal expert also maintains a busy practice providing mental
23 health treatment to patients. As a result of the compressed time for Defendant’s rebuttal expert to
24 review Plaintiff’s deposition transcript and pertinent treating records, Defendant is seeking an
25 extension of time to allow the rebuttal expert sufficient time to complete reviewing these materials
26 and finalize their report.

27 The parties are scheduled to participate in the deposition of Defendant’s Rule 30(b)(6)
28 deponent on November 1, 2022. Further, Defendant is in the process of scheduling the deposition

1 of Plaintiff's treating psychologist.

2 Defendant's counsel contacted Plaintiff's counsel on October 14, 2022 and left a message
3 with the receptionist. Further, counsel followed up on this phone call on October 17, 2022, and
4 again left a message with the receptionist. Further, the receptionist stated only Patrick Kang could
5 approve an extension request and that Mr. Kang was unavailable. To date, counsel has not received
6 a response.¹

7 **II. LEGAL ARGUMENT**

8 **A. Good Cause Supports this Request.**

9 When a motion requires the modification of the scheduling order, the movant must first
10 satisfy the "good cause" standard established by Rule 16(b). *See Johnson v. Mammoth Recreations,*
11 *Inc.*, 975 F.2d 604, 608 (9th Cir. 1992); *see also* Fed. R. Civ. P. 16(b)(4) ("A schedule may be
12 modified only for good cause and with the judge's consent"). The good cause inquiry is focused on
13 the movant's reasons for seeking to modify the scheduling order and primarily considers the
14 movant's diligence. *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir.
15 2013). The key determination is whether the subject deadline "cannot reasonably be met despite
16 the diligence of the party seeking the extension." *Johnson*, 975 F.2d at 609. The Court considers
17 whether relief from the scheduling order is sought based on the development of matters that could
18 not have been reasonably anticipated at the time the schedule was established. *Jackson v. Laureate,*
19 *Inc.*, 186 F.R.D. 605, 608 (E.D. Cal. 1999). Courts may also consider other pertinent circumstances,
20 including whether the movant was diligent in seeking modification of the scheduling order once it
21 became apparent that the movant required relief from the deadline at issue. *Sharp v. Covenant Care*
22 *LLC*, 288 F.R.D. 465, 467 (S.D. Cal. 2012).

23 As an initial matter, Defendant's motion to extend the deadline is timely. The prior deadline,
24 October 15, 2022, fell on a Saturday. Pursuant to Fed.R.Civ.P. 6(a)(1)(C), if the deadline falls on a

25
26 ¹ Defendant notes this is not the first time Plaintiff's counsel has not responded to a request for an extension. Defendant
27 was forced to file a motion for an extension of time to respond to Plaintiff's written discovery requests after Plaintiff's
28 counsel failed to respond to a request. *See* ECF No. 22 at 2:10-12 (noting Plaintiff's counsel indicated he would discuss
the extension request with his client but then failed to provide any further response). In addition, Defendant was forced
to file a motion to extend the rebuttal expert deadline after counsel failed to respond to undersigned counsel's email or
phone call. ECF No. 27 at 2-3.

1 Saturday, the deadline is extended to “the next day that is not a Saturday, Sunday, or legal holiday.”
2 Accordingly, the deadline for the expert rebuttal was moved from Saturday October 15, 2022, to
3 Monday, October 17, 2022.

4 Defendant respectfully asserts good cause supports the request to extend the rebuttal expert
5 deadline. Defendant has diligently conducted discovery in this matter. Defendant has deposed
6 Plaintiff, subpoenaed relevant medical providers, scheduled the deposition of Defendant’s Rule
7 30(b)(6) deponent, and completed written discovery requests. In addition, Defendant retained an
8 expert in this matter and provided the relevant information for the expert’s review.

9 However, undersigned counsel was unexpectedly out of the office the week of October 10th
10 as counsel sought treatment at an urgent care. This, and the follow-up appointments impacted
11 counsel’s ability to finalize the rebuttal report with the expert. In addition, counsel has another
12 medical appointment scheduled for October 18, 2022. Despite this medical issue, undersigned
13 counsel attempted to work with the expert over the weekend to finalize the rebuttal report, but was
14 unable to. Accordingly, Defendant respectfully asserts good cause supports this request.

15 **B. Discovery Completed to Date.**

16 To date, the Parties have exchanged initial and supplemental disclosures of documents and
17 witnesses pursuant to FRCP 26(a)(1). Plaintiff has propounded written discovery including
18 interrogatories, requests for production, and requests for admission. Defendant has served responses
19 to Plaintiff’s written discovery requests. Defendant has propounded Defendant’s First Set of
20 Requests for Production of Documents, Defendant’s First Set of Interrogatories, and Defendant’s
21 First Set of Requests for Admissions. Plaintiff has served responses to Defendant’s written
22 discovery requests. Defendant deposed Plaintiff on October 4, 2022.

23 **C. Discovery Which Still Needs to Occur.**

24 Defendant is in the process of finalizing the rebuttal expert report. In addition, the parties
25 have scheduled the deposition of Defendants’ Rule 30(b)(6) deponent for November 1, 2022.
26 Defendant is in the process of scheduling the deposition of Plaintiff’s treating physician. In addition,
27 Plaintiff disclosed a new treating physician during the deposition and Defendant is in the process
28 of subpoenaing those medical records.

D. Proposed Schedule for Completing Remaining Discovery.

Discovery Cut-Off Date – November 15, 2022, discovery cut-off date shall remain the same.

Rebuttal Expert Deadline – The October 15, 2022, rebuttal expert disclosure deadline shall be extended to October 26, 2022.

Dispositive Motions – the December 15, 2022, dispositive motions deadline shall remain the same.

Pretrial Order – If no dispositive motions are filed, the Joint Pretrial Order shall be filed thirty (30) days after the date set for the filing of the dispositive motions. In the event dispositive motions are filed, the date for filing the Joint Pretrial Order shall be suspended until thirty (30) days after the decision on the dispositive motions or by further order of the Court.

III. CONCLUSION

Defendant respectfully requests an eight (8) day extension to the deadline to produce a rebuttal expert. Defendant has worked diligently to complete discovery in this matter, but due to counsel's unexpected medical issues, Defendant has been unable to do so.

Dated this 17th day of October, 2022.

JACKSON LEWIS P.C.

/s/ Katlyn M. Brady

Joshua A. Sliker, Bar No. 12493

Katlyn M. Brady, Bar No. 14173

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Attorneys for Defendant

ORDER

For good cause shown, IT IS ORDERED
that ECF No. 28 is GRANTED.

IT IS SO ORDERED

DATED: 3:37 pm, October 18, 2022



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Jackson Lewis, P.C. and that on this 17th day of October, 2022, I caused to be served via this Court's electronic filing system, a true and correct copy of the above foregoing **DEFENDANTS' REQUEST TO EXTEND THE EXPERT REBUTTAL DEADLINE** properly addressed to the following:

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